

IN THE SUPREME COURT OF OHIO

Richard Houck, et al., : Case No. 06-1262
: :
Appellants, : :
vs. : [On Appeal from Huron County
: Court of Appeals, Sixth Appellate
Board of Park Commissioners, : District, Case No. H-05-018]
Huron County Park District, et al, : :
: :
Appellees. : :

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SUPREME COURT OF OHIO

AMICI CURIAE BRIEF OF OHIO FARM BUREAU FEDERATION, INC.
AND HURON COUNTY FARM BUREAU IN SUPPORT
OF APPELLANTS, RICHARD HOUCK, ET AL.

Nan M. Still (0038589)
Ohio Farm Bureau Federation, Inc.
280 Plaza
P.O. Box 182383
Columbus, Ohio 43218-2383
(614) 246-8257
ATTORNEY FOR *AMICI CURIAE*,
OHIO FARM BUREAU FEDERATION,
INC. AND HURON COUNTY
FARM BUREAU

D. Jeffery Rengel (0029069)
Thomas R. Lucas (0071916)
Rengel Law Office
421 Jackson Street
Sandusky, Ohio 44870
(419) 627-0400
ATTORNEYS FOR APPELLANTS,
RICHARD HOUCK, ET AL.

Joan C. Szuberla (0020018)
Gary D. Sikkema (0014261)
Spengler Nathanson P.L.L.
608 Madison Avenue, Suite 1000
Toledo, Ohio 43604-1169
(419) 241-2201

John D. Latchney
Tomino & Latchney, LLC
803 E. Washington Street
Suite 200
Medina, Ohio 44256
(330) 723-4656

Abraham Lieberman
Dennis M. O'Toole
Baumgartner & O'Toole, LPA
5455 Detroit Road
Sheffield Village, Ohio 44054
(440) 930-4001

Ladd W. Beck
Kuhlman & Beck
4590 State Route 600
Gibsonburg, Ohio 43431
(419) 637-2168

ATTORNEYS FOR APPELLEES,
BOARD OF PARK
COMMISSIONERS, HURON
COUNTY PARK
DISTRICT, ET AL.

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICI CURIAE.....	1
STATEMENT OF CASE AND FACTS.....	2
LAW AND ARGUMENT.....	2
CONCLUSION	4
CERTIFICATE OF SERVICE	5

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Brown v. Bd. of Edn., Monroeville</i> (1969), 20 Ohio St. 2d 68.....	3
<i>Dietrick v. Noel</i> (1884), 42 Ohio St. 18.....	2
<i>1540 Columbus Corp. v. Cuyahoga Cty.</i> (1990), 68 Ohio App.3d 713.....	2,3
<i>Gill v. Fletcher</i> (1906), 74 Ohio St. 295.....	2
<i>Grace v. Koch</i> (1998), 81 Ohio St.3d 577.....	2
<i>Haynes v. Jones</i> (1915) 91 Ohio St. 197.....	3
<i>Nottke v. Bd. of Park Comm'rs</i> , (2005), 2005 Ohio 323, 2005 Ohio App. LEXIS 293.....	4
<i>Pennsylvania Rd. Co v. Donovan</i> (1924), 111 Ohio St. 341.....	2
<i>State ex rel. A.A.A. Invest. v. Columbus</i> (1985), 17 Ohio St.3d 151.....	2
<i>Wyatt v. Ohio Dept. of Transp.</i> (1993), 87 Ohio App.3d 1.....	3
 <u>ENCYCLOPAEDIA</u>	
16 Ohio Jurisprudence 3d (1979).....	3

INTEREST OF AMICI CURIAE

The Ohio Farm Bureau Federation is the largest, voluntary non-profit general farm organization in Ohio. Its purposes are to promote, protect, and represent the business, economic, social and educational interests of farmers across Ohio and to represent agriculture. With 227,374 member families and member county Farm Bureau organizations in all 88 counties in Ohio, Ohio Farm Bureau Federation's members produce virtually every kind of agricultural commodity found in this area of the country.

Huron County, where the subject case originated, has 1,359 families who are members of the County Farm Bureau. As such, the Huron County Farm Bureau shares the purpose, objectives and mission of the Ohio Farm Bureau.

Ohio Farm Bureau members own substantial land located in the areas in question and throughout the state, on which they engage in agricultural production for their livelihood. It is important to our members' livelihood that their land be preserved and protected. The decision in this case has the potential to impact state law and affect Farm Bureau members' property, environment and livelihood throughout the state. Because Ohio Farm Bureau Federation and Huron County Farm Bureau are strong advocates of private property rights and have an interest in maintaining the viability of land used in productive agriculture, we have a vital interest in the outcome of this case.

STATEMENT OF THE CASE AND FACTS

For purpose of this brief, the Ohio Farm Bureau Federation and Huron County Farm Bureau, hereby adopt the Statement of the Case and Facts as set forth by the Appellants, Richard Houck, et al., and incorporate same by reference as if fully rewritten herein.

LAW AND ARGUMENT

The single issue accepted by this Court for consideration on appeal is whether Ohio park districts can be divested of real property by private citizens through the doctrine of adverse possession where all of the elements of adverse possession are shown.

Ohio Farm Bureau Federation and Huron County Farm Bureau support the arguments presented in the Brief of Richard Houck, et al., and offer the following additional comments.

The law is well established that under a claim of adverse possession, the claimant desiring title of the land must show exclusive possession that is open, notorious, continuous, and adverse for a twenty-one-year period. *Grace v. Koch* (1998), 81 Ohio St.3d 577, 579, citing *Pennsylvania Rd. Co v. Donovan* (1924), 111 Ohio St. 341, 349-50; *State ex rel. A.A.A. Invest. V. Columbus* (1985), 17 Ohio St.3d 151,153; *Gill v. Fletcher* (1906), 74 Ohio St. 295 (syllabus); *Dietrick v. Noel* (1884), 42 Ohio St. 18, 21. Failure to prove any of the elements results in failure to acquire title by adverse possession. *Pennsylvania Rd. Co., supra*.

Courts have held that adverse possession cannot be applied against the state and its political subdivisions. *1540 Columbus Corp. v. Cuyahoga Cty.* (1990), 68 Ohio App.3d 713,717, citing *Haynes v. Jones* (1915) 91 Ohio St. 197, paragraph three of syllabus. However, in *Brown v. Bd. of Edn., Monroeville* (1969), 20 Ohio St. 2d 68, this Court held that school boards are not exempt from adverse possession claims brought by private litigants.

While *Brown* has been criticized, in *Wyatt v. Ohio Dept. of Transp.* (1993), 87 Ohio App.3d 1,5 and *1540 Columbus Corp., supra* at 719, those cases are distinguishable on their facts from this case. In *Wyatt*, the litigants claiming adverse possession offered deficient proof of adverse possession against a municipality when, in fact, the state itself held the easement at issue. In *1540 Columbus Corp.*, the litigants claiming adverse possession were interfering with an existing public county road. The case under consideration involves land used for a railroad until 1979, which was sold to a rails-to-trails group in 1997 and transferred to the Appellees a year later. The Appellants had used the land continuously since at least 1979. The situation in this case is analogous to that in *Brown*.

The Appellants, either directly or through “tack on” have possessed the land under dispute since at least 1979 until the present time. The Appellants cleared the land, cultivated the land and fenced part of the land for a period of time, to the exclusion of others, for over 21 years. Improvements, enclosures, cultivation and pasturage are examples of the kinds of activity that may support a claim for adverse possession. *1540 Columbus Corp., supra* at 720, citing 16 Ohio Jurisprudence 3d (1979), Adverse Possession, Section 15. The first notice the Appellants’ had of another

claim to the land was a letter they received from the Director of the Huron County Park District in February 2001, when the 21 years required for adverse possession already had been satisfied.

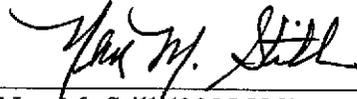
In a recent case, *Nottke v. Bd. of Park Comm'rs*, (2005), 2005 Ohio 323, 2005 Ohio App. LEXIS 293, a park district raised the claim of adverse possession against a private litigant in a quiet title action. If park districts can claim adverse possession, the same claim should be able to be made against park districts. While school districts and park districts do not perform the same functions, and one board is elected and the other is appointed, the importance of their respective duties and their relative status in the state hierarchy is, functionally, equal. Both school districts and park districts can acquire land, dispose of land, and hold land in trust for the public use. School districts are not exempt from adverse possession claims and park districts should not be exempt from adverse possession claims.

CONCLUSION

Park districts should not be able to claim adverse possession against private landowners while claiming exemption to adverse possession for lands they hold. This double standard is inherently unjust and needs to be corrected. While this is a case of first impression, Ohio Farm Bureau Federation and Huron County Farm Bureau believe the law supports a finding that park districts, like school districts, are not exempt from adverse possession where all of the legal elements have been shown.

For the aforementioned reasons, the Ohio Farm Bureau Federation and Huron County Farm Bureau respectfully ask this court to reverse the decisions of the trial and appellate courts and to refer this matter back to the Court of Common Pleas of Huron County for trial.

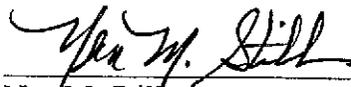
Respectfully submitted,



Nan M. Still (0038589)
Ohio Farm Bureau Federation, Inc.
280 North High Street
P.O. Box 182383
Columbus, Ohio 43218-2383
(614) 246-8257
Attorney for *Amici Curiae*, Ohio
Farm Bureau Federation, Inc. and
Huron County Farm Bureau

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Amici Curiae* Brief of the Ohio Farm Bureau Federation, Inc. and Huron County Farm Bureau on Behalf of Appellants was sent via regular first-class U.S. mail, postage prepaid, to D. Jeffery Rengel, Esq. and Thomas R. Lucas, Esq., Rengel Law Office, 421 Jackson Street, Sandusky, OH 44870, Attorneys for Appellant; Joan C. Szuberla, Esq. and Gary D. Sikkema, Esq., Spengler Nathanson P.L.L., 608 Madison Avenue, Suite 1000, Toledo, OH 43604-1169; John D. Latchney, Esq., Tomino & Latchney, LLC, 803 E. Washington Street, Suite 200, Medina, OH 44256; Abraham Lieberman, Esq. and Dennis M. O'Toole, Esq., Baumgartner & O'Toole, LPA, 5455 Detroit Road, Sheffield Village, OH 44054; Ladd W. Beck, Esq., Kuhlman & Beck, 4590 State Route 600, Gibsonburg, OH 43431, Attorneys for Appellees, on the 18th day of December, 2006.



Nan M. Still